

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RUSSELL BILLINGSLEY,

Defendant.

CASE NO. 8:08CR72

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”). The government adopted the PSR. (Filing No. 49.) The Defendant has not filed objections, although objections were initially presented to the probation officer.¹ The Defendant filed a motion for deviation from the guidelines and a supporting brief, and the government stated its position regarding the motion. (Filing Nos. 49, 50, 51.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Court notes that the drug quantity stated in the plea agreement is at least 80 but less than 100 kilograms of marijuana equivalent, resulting in base offense level 24. The PSR attributes a higher drug quantity to the Defendant, resulting in base level 26. Because this issue might become relevant, the Court intends to honor the plea agreement.

The Defendant's motion for deviation will be heard at sentencing.

¹Objections need not be considered unless filed with the Court under ¶ 6 of the sentencing schedule. NECrimR 32.1(b)(6).

IT IS ORDERED:

1. The Court's tentative findings are that the drug quantity and base offense level are at least 80 but less than 100 kilograms of marijuana equivalent, resulting in base offense level 24, in accordance with the plea agreement;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and
6. The Defendant's motion for deviation (Filing No. 50) will be heard at sentencing.

DATED this 4th day of March, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge